

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|                                     |   |                    |
|-------------------------------------|---|--------------------|
| In the Matter of                    | ) | WC Docket No 18-60 |
|                                     | ) |                    |
| Iowa Network Access Division Tariff | ) | Transmittal No. 36 |
| F.C.C. No. 1                        | ) |                    |

**Rebuttal Comments**

South Dakota Network, LLC (SDN), by its attorneys, hereby provides rebuttal comments in the above-captioned proceeding. Specifically, SDN comments on the arguments made by AT&T and Sprint that Aureon, as a CEA provider, must benchmark its rate for centralized equal access switching service to CenturyLink's rates for tandem switching service. As shown, the arguments of AT&T and Sprint should be rejected.

In the *Aureon Liability Order*, the Commission found that Aureon is a competitive LEC subject to its CLEC benchmarking rule. However, the Commission did not reach the issue of whether Aureon's rates violate Rule 51.911(c) of the rules, finding that it did not "have an adequate record to determine the pertinent benchmark rate."<sup>1</sup> Although the Commission stated that it intended "to develop such facts in the damages phase of this proceeding,"<sup>2</sup> the Wireline Competition Bureau (Bureau) asked certain questions in this proceeding concerning whether Aureon's proposed rates complied with the Commission's benchmarking rules. The Bureau states that "Aureon is a CEA provider, which does not serve end users" and, therefore, "the procedure for its benchmarking obligation is contained in section 61.26(f) of the Commission's

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<sup>1</sup> *AT&T Corp. v. Iowa Network Services, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd. 9677, 9689, ¶24 (2017) (*Aureon Liability Order*).

<sup>2</sup> *Id.* at n. 132.

rules."<sup>3</sup> The Bureau states that section 61.26(f) requires that "[i]f a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services...."<sup>4</sup> The Bureau states that the term "competing incumbent LEC" means the "incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."<sup>5</sup>

In their oppositions to Aureon's Direct Case, AT&T and Sprint argue that CenturyLink is the competing ILEC for benchmarking purposes because CenturyLink is the incumbent local exchange carrier that would provide tandem switching service if it was not provided by Aureon. AT&T and Sprint also argue that only CenturyLink has the network capability to provide the services provided by Aureon across the state of Iowa. Therefore, AT&T and Sprint argue that Aureon must benchmark its tandem switching and transport rate to the services provided by CenturyLink.

The arguments of AT&T and Sprint appear focused on the transport services offered by Aureon and do not separately address Aureon's CEA switching service. Moreover, AT&T and Sprint do not argue or show that CenturyLink's tandem switching service is the same as CEA switching service and, in fact, it is not. Notably, CenturyLink does not provide equal access functionality as part of its tandem switching service, which is a critical component of CEA switching service and one of the primary reasons CEA providers were authorized by the

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<sup>3</sup> *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, Order Designating Issues for Investigation, WC Docket No. 18-60, Transmittal No. 36, ¶9 (rel. April 19, 2018)

<sup>4</sup> *Id.*, citing 47 CFR §61.26(f).

<sup>5</sup> *Id.*, citing 47 CFR §61.26(a)(2).

Commission. Section 61.26(f) of the rules states that the CLEC's rate for the access services provided "may not exceed the rate charged by the competing ILEC for the same access services...." (emphasis added). CenturyLink's tandem switching service is not "the same access service" as CEA switching service provided by a CEA provider because, at a minimum, it does not provide centralized equal access. Thus, CenturyLink does not have a tandem switching rate to which a CEA provider must benchmark its CEA switching rate.

Arguably, no carrier, with respect to switching, provides "the same access service" as a CEA provider, other than the three carriers authorized by the Commission to provide this service. In granting section 214 authority, the Commission authorized CEA providers to provide access services in a manner that is not provided by other local exchange carriers.

Rather than demonstrate that CenturyLink's tandem switching service is the same as the switching service provided by a CEA provider, AT&T and Sprint state that CenturyLink would provide tandem switching service if it was not provided by Aureon. This ignores the fact that CenturyLink's tandem switching service does not include centralized equal access and CenturyLink is not authorized by the Commission to provide this service. Thus, CenturyLink's current tandem switching service could not be a replacement for CEA service. AT&T's and Sprint's second point, that only CenturyLink has the network capability to provide the services provided by Aureon across the state of Iowa, does not cure this defect.

Accordingly, the Bureau should find that the facts do not support a finding that Aureon must benchmark its rate for centralized equal access switching service to the generic tandem switching service rates of CenturyLink.

Respectfully submitted,

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